Chapter 21: "Automatic Waiver" Proceedings—Juvenile Sentencing Hearings

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This chapter discusses the requirements for "juvenile sentencing hearings" in "automatic waiver" proceedings. If a juvenile is convicted of one of twelve enumerated "specified juvenile violations," he or she is not entitled to a juvenile sentencing hearing, and the court must impose an adult sentence. The enumerated offenses requiring imposition of adult sentence are listed in Section 21.1. If a juvenile is convicted of a "specified juvenile violation" that does not require imposition of adult sentence, the court must hold a juvenile sentencing hearing to determine whether to impose sentence upon the juvenile or place the juvenile on probation and commit him or her to public wardship.

See Section 1.6 for a comparison of waiver and designated case proceedings.

> **Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and "traditional waiver" proceedings, and to Subchapter 6.900, which govern "automatic waiver" proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook:Delinquency & Criminal Proceedings* (MJI, 1998).

21.1 Offenses That Require Imposition of Adult Sentence

MCR 6.931(A) states that "[i]f the juvenile has been convicted of an offense listed in MCL 769.1(a)–(l), the court must sentence the juvenile in the same manner as an adult. MCL 769.1(1)(a)–(l), in turn, provides that if the juvenile is convicted of the following subset of specified juvenile violations, the juvenile must be sentenced as an adult:

- burning a dwelling house, MCL 750.72;
- assault with intent to murder, MCL 750.83;
- assault with intent to maim, MCL 750.86;
- attempted murder, MCL 750.91;
- conspiracy, MCL 750.157a, to commit murder;
- solicitation, MCL 750.157b, to commit murder;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- kidnapping, MCL 750.349;
- first-degree criminal sexual conduct, MCL 750.520b;
- armed robbery, MCL 750.529; and
- carjacking, MCL 750.529a.

In *People v Conat,* 238 Mich App 134 (1999), the Court considered four consolidated cases. The prosecuting attorneys appealed circuit court orders finding MCL 769.1, as amended by 1996 PA 247, unconstitutional. The Court of Appeals reversed and remanded the cases for trial. The amendment in question requires the circuit court to sentence juveniles convicted of the 12 very serious "specified juvenile violations" listed above as adults upon conviction. The court retains no discretion to place the juvenile on probation and commit the juvenile to the public wardship. In the instant cases, the circuit courts found that this regime violated the separation of powers doctrine, the Equal Protection Clauses of the federal and Michigan constitutions, procedural due process requirements, and the Michigan Supreme Court's authority to govern procedure in Michigan courts.

The Court of Appeals first held that the statutory amendment did not violate the separation of powers doctrine by assigning judicial sentencing discretion to the prosecuting attorney. *Conat, supra* at 146. The separation of powers doctrine is intended to prevent exercise by one branch of government of the whole power assigned to another branch of government. Under the amended statute in question, the prosecuting attorney does not impose sentence (a judicial function); rather, as in the adult criminal justice system, a

prosecuting attorney's charging decision affects the sentence that may be imposed. MCL 769.1 is a permissible legislative limitation on judicial sentencing discretion, and the court still maintains discretion to fashion an individualized (adult) sentence.

Nor does MCL 769.1 violate Equal Protection. *Conat, supra* at 153. The defendants did not argue that the statutory classification—those eligible to be charged under the "automatic" or prosecutorial waiver regime and those not eligible to be so charged—itself violated the juveniles' equal protection rights. Instead, the defendants argued that the prosecuting attorney's charging discretion, when exercised, would result in an arbitrary classification of some juveniles who would be sentenced as adults upon conviction and some who would be treated "as juveniles." However, the Court of Appeals found that the defendants had not shown intentional discrimination based on impermissible factors by prosecuting attorneys in the exercise of their charging discretion.

The Court of Appeals held that the statute did not violate state and federal procedural due process guarantees. *Id.* at 157. Although a "juvenile sentencing hearing" was required in all "automatic waiver" cases before the amendment, such a hearing was not constitutionally required. The Court of Appeals stated that there is no constitutional right to be treated as a juvenile. In addition, the Court found *Kent v United States,* 383 US 541 (1966), inapplicable. *Kent* does not apply to an "automatic" or prosecutorial waiver regime; rather, the "full investigation" and hearing required by *Kent* applies to a "traditional" or judicial waiver regime. See MCL 712A.4. Finally, the lack of standards to guide the prosecuting attorney's charging discretion, by itself, does not violate procedural due process requirements.

Hoekstra, J, concurred but wrote separately to state that he viewed the issue as one of jurisdiction. *Id.* at 165. The statutory scheme within which amended MCL 769.1 is placed provides the prosecuting attorney with a choice of courts in which to file charges. This jurisdictional choice has sentencing consequences but does not violate the separation of powers doctrine.

In a case decided before the 1996 amendments to the "automatic waiver" statutes, the Court of Appeals held that the "automatic waiver" procedure did not violate the separation of powers doctrine of Const 1963, art 3, § 2. *People v Black,* 203 Mich App 428, 429–30 (1994).

21.2 Offenses That Do Not Require Imposition of Adult Sentence

MCL 769.1(3) states that "[u]nless a juvenile is required to be sentenced in the same manner as an adult under [MCL 769.1(1)], a judge of the court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the public would be served

by placing the juvenile on probation and committing the juvenile to an institution or agency described in the youth rehabilitation services act, [MCL 803.301 et seq.], or by imposing any other sentence provided by law for an adult offender." MCR 6.931(A) contains substantially similar language.

Thus, where the juvenile is convicted of any of the following "specified juvenile violations," a hearing must be held to determine whether the juvenile will be sentenced as an adult:

- assault with intent to rob while armed, MCL 750.89;
- bank, safe, or vault robbery, MCL 750.531;
- first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon;
- assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
- escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a;
- manufacture, sale, or delivery of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i), or possession of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7403(2)(a)(i);*
- any attempt, MCL 750.92, solicitation, MCL 750.157b, or conspiracy, MCL 750.157a, to commit a specified juvenile violation other than murder;
- any lesser-included offense of the above offenses arising out of the same transaction; and
- any other violation arising out of the same transaction if the juvenile is charged with one of the above offenses.

*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401 (2)(a)(i) and MCL 333.7403 (2)(a)(i) to require manufacture, sale, delivery, or possession of *1000 grams* or more of a Schedule 1 or 2 narcotic or cocaine.

21.3 Required Procedures at Juvenile Sentencing Hearings

A "juvenile sentencing hearing" is conducted by the circuit court following a criminal conviction of a juvenile to determine whether the best interests of the public would be served by:

- imposing any sentence provided by law for an adult offender, or
- placing the juvenile on probation and committing the juvenile to a state institution or agency as described in the Youth

> Rehabilitation Services Act, MCL 803.301 et seq. MCL 769.1(3).

"At the conclusion of the juvenile sentencing hearing, the court shall determine whether to impose a sentence against the juvenile as though an adult offender or whether to place the juvenile on juvenile probation and commit the juvenile to state wardship pursuant to MCL 769.1b." MCR 6.931(A).

In *People v Veling,* 443 Mich 23, 42–43 (1993), the Michigan Supreme Court held that the circuit court does not lose jurisdiction to sentence an "automatically" waived juvenile if the juvenile is tried for an enumerated offense but convicted of a lesser-included offense or other offense that is not an enumerated offense. See also *People v Dean,* 198 Mich App 267, 269–70 (1993), where the Court of Appeals held that a plea to a lesser-included offense does not divest the court of jurisdiction under the "automatic waiver" statutes.

A juvenile sentencing hearing must not be held if the circuit court has obtained jurisdiction via "traditional waiver" proceedings in the Family Division. MCR 6.901(B) and *People v Cosby,* 189 Mich App 461, 464 (1991).*

*See Chapter 16.

A. Reports

An FIA Delinquency Services Worker and Department of Corrections Probation Officer will prepare Presentence Information Reports. See MCL 771.14, MCL 771.14a, MCL 803.224, and FIA *Services Manual,* Item 812.1.

The court must give the prosecuting attorney, the juvenile, and the juvenile's attorney an opportunity to review the presentence report and the social report prior to the juvenile sentencing hearing. The court may exempt information from the reports as provided in MCL 771.14 and MCL 771.14a. MCR 6.931(D). The social report is the written report prepared by the Family Independence Agency or county juvenile agency under MCL 803.224 of the Juvenile Facilities Act. MCR 6.903(L).

Contents of social reports. Prior to a juvenile sentencing hearing, the Family Independence Agency or county juvenile agency must inquire into the antecedents, character, and circumstances of the juvenile, and must report in writing to the court as provided in the Juvenile Facilities Act. MCL 771.14a. The Juvenile Facilities Act, in turn, requires the following information be provided to the court:

> "(a) An evaluation of and a prognosis for the juvenile's adjustment in the community based on factual information contained in the report.

> "(b) A recommendation as to whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.
>
> "(c) A recommendation as to what disposition is in the best interests of the public welfare and the protection of public security." MCL 803.224(2)(a)–(c).

Note: A determination of the juvenile's mental maturity, which is crucial to determining how well the juvenile will adapt to the different treatment modalities of the juvenile and adult systems, generally requires a battery of tests. Such tests may be administered by examiners at the juvenile court (now the Family Division). Note, however, that a juvenile's mental maturity is not a criterion used to decide whether to sentence or place the juvenile on probation.

Information that may be exempted from disclosure. MCL 771.14a(2) states that "[t]he court may exempt from disclosure in a report under this section information or a diagnostic opinion which might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality. If a part of the report is not disclosed, the court shall state on the record the reasons for its action and inform the juvenile and his or her attorney that information has not been disclosed. The action of the court in exempting information is subject to appellate review. Information or a diagnostic opinion exempted from disclosure under this subsection shall be specifically noted in the report."

*See Section 25.7 for a more complete discussion of the use of prior juvenile adjudications and conduct that did not result in an adjudication when determining whether to sentence a juvenile as an adult and when determining the length of a juvenile's adult sentence.

Use of juvenile adjudications to determine whether to sentence a juvenile in the same manner as an adult.* MCL 712A.23 states as follows:

> "Evidence regarding the disposition of a juvenile under [the Juvenile Code] and evidence obtained in a dispositional proceeding under [the Juvenile Code] shall not be used against that juvenile for any purpose in any judicial proceeding except in a subsequent case against that juvenile under [the Juvenile Code]. This section does not apply to a criminal conviction under [the Juvenile Code]."

MCL 712A.23 does not prevent a judge from considering an adult criminal defendant's juvenile offense record when imposing sentence upon the adult defendant. *People v McFarlin,* 389 Mich 557, 561 (1973). In *People v Coleman,* 19 Mich App 250, 255–56 (1969), the Court of Appeals held that MCL 712A.23 did not prevent the use of a defendant's juvenile offense record at sentencing following "traditional waiver" proceedings. The Court concluded that use of the term "evidence" in MCL 712A.23 limited its

prohibition to "testimony and matters actually presented at trial." *Id.* at 256. Although *Coleman* involved imposition of an adult sentence upon a juvenile following "traditional waiver" proceedings, the court's rationale supports use of juvenile records to determine *whether* to sentence a juvenile in the same manner as an adult or commit the juvenile in "automatic waiver" proceedings. MCL 769.1(3)(c) requires a court to consider a juvenile's delinquency record when making that decision. See also *People v Laughlin,* unpublished opinion per curiam of the Court of Appeals, decided January 24, 1997 (Docket No. 189428), relying on *People v Zinn,* 217 Mich App 340, 342 (1996), and *People v Carpentier,* 446 Mich 19 (1994) (the trial court erred by relying on a prior uncounselled juvenile adjudication when deciding whether to sentence the juvenile in the same manner as an adult or to commit the juvenile as a state ward).

No right to independent psychiatrist or psychologist for juvenile sentencing hearing. A judge has discretion in all cases to obtain a psychiatric report prior to sentencing. *People v Wright,* 431 Mich 282, 287 (1988). A juvenile is not entitled to an independent psychiatrist or psychologist at public expense for purposes of a juvenile sentencing hearing. In *People v Stone,* 195 Mich App 600, 604–06 (1992), the Court held that it was not a violation of Equal Protection guarantees to deny a juvenile's request for public funds to hire an independent psychologist of his own choosing. Although *Ake v Oklahoma,* 470 US 68 (1985) may require appointment of a psychiatrist or psychologist for an indigent defendant prior to trial, the court's appointment of an expert employed by the state sufficiently protects a juvenile's interests at a juvenile sentencing hearing, where guilt has already been determined. The expert's determination that the juveniles in *Stone* should be sentenced as adults was irrelevant.

B. Rules of Evidence

The rules of evidence do not apply at a juvenile sentencing hearing. MCL 769.1(3) and MCR 6.931(E)(1). All relevant and material evidence may be received by the court and relied upon to the extent of its probative value, even though such evidence may not be admissible at trial. The court must receive and consider the presentence report prepared by the probation officer and the social report prepared by the Family Independence Agency or county juvenile agency. MCR 6.931(E)(1).

C. Burden and Standard of Proof

Except for controlled substance offenses allowing for imposition of alternative sentences,* the court must sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in the Youth Rehabilitation Services Act, MCL 803.301

*See Section 23.4.

et seq. MCL 769.1(3). MCR 6.931(E)(2) contains substantially similar language.

In 1996, the Legislature amended MCL 769.1(3) to eliminate the requirement that the court consider the best interests of the juvenile when deciding whether to sentence the juvenile as an adult. Thus, the court is no longer required to balance the competing interests of the juvenile in rehabilitation and the public in safety. See *People v Cheeks,* 216 Mich App 470, 478–79 (1996). Moreover, before 1996, a sentencing court was required to give the applicable statutory and court rule criteria "weight appropriate to the circumstances." The court is now required to consider the best interests of the public alone, to consider all of the criteria listed in Section 21.4, below, but to give greater weight to the seriousness of the offense and the juvenile's prior record. See *People v Perry,* 218 Mich App 520, 531–32 (1996), and cases cited therein.

21.4 Criteria to Determine Whether to Impose Adult Sentence at Juvenile Sentencing Hearings

MCL 769.1(3)(a)–(f) set forth the criteria a court must consider when deciding whether to impose an adult sentence or place the juvenile on probation and commit him or her to public wardship. Those provisions state:

> "(3) Unless a juvenile is required to be sentenced in the same manner as an adult under subsection (1), a judge of a court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or by imposing any other sentence provided by law for an adult offender. Except as provided in subsection (5),* the court shall sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309. The rules of evidence do not apply to a hearing under this subsection. In making the determination required under this subsection, the judge shall consider all of the following, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:

*MCL 769.1(5) deals with alternative sentences for controlled substance violations. See Section 23.4.

> (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
>
> (b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
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> (c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
>
> (d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.
>
> (e) The adequacy of the punishment or programming available in the juvenile justice system.
>
> (f) The dispositional options available for the juvenile."

MCR 6.931(C)(4) contains substantially similar language.

21.5 Waiver of Juvenile Sentencing Hearing

MCL 769.1(4) provides that the court may waive the juvenile sentencing hearing under MCL 769.1(3) with the consent of the prosecutor and the defendant. If the court waives the sentencing hearing, the court may place the juvenile on probation and commit the juvenile to a state institution or agency but shall not impose any other sentence provided by law for an adult offender. MCL 769.1(4) states:

> "(4) With the consent of the prosecutor and the defendant, the court may waive the hearing required under subsection (3). If the court waives the hearing required under subsection (3), the court may place the juvenile on probation and commit the juvenile to an institution or agency described in the youth rehabilitation services act, [MCL 803.301 et seq.], but shall not impose

> any other sentence provided by law for an adult offender."

See also MCR 6.931(B), which states:

> "The court need not conduct a juvenile sentencing hearing if the prosecuting attorney, the juvenile, and the attorney of the juvenile, consent that it is not in the best interest of the public to sentence the juvenile as though an adult offender. If the juvenile sentencing hearing is waived, the court shall not impose a sentence as provided by law for an adult offender. The court must place the juvenile on juvenile probation and commit the juvenile to state wardship."

21.6 Requirements for Committing a Juvenile to Public Wardship

The Michigan Supreme Court has described placing a juvenile on probation and committing him or her to public wardship as an alternative to the normal adult penalty for an offense rather than as a sentence within the "juvenile system":

*See Section 22.1.

> "We do not agree with the Court of Appeals that the statutory scheme involved in this case demonstrates a legislative intent to 'treat juveniles who are sentenced within the juvenile offender system differently than other offenders, including juveniles sentenced as adults. 220 Mich App at 413. Juveniles who come within the jurisdiction of the adult system by automatic waiver are not 'sentenced within the juvenile offender system' when they are sentenced to probation under MCL 769.1(3) . . . . They are sentenced within the adult system with a sentence that is an alternative to the normal adult penalty. MCL 769.1(10), 769.1b, 771.7(1) . . . make clear that circuit court jurisdiction over juvenile defendants convicted as adults continues after imposition of a sentence under MCL 769.1(3)."* *People v Valentin,* 457 Mich 1, 11 (1998).

For purposes of "automatic waiver" proceedings, a public ward is a youth accepted for care by a youth agency who is at least 14 years of age when committed to the youth agency by a court of general criminal jurisdiction under MCL 769.1 if the act for which the youth is committed occurred before his or her 17th birthday. MCL 803.302(c)(i)–(ii). A youth agency is either the Family Independence Agency or a county juvenile agency, whichever has responsibility over a public ward. MCL 803.302(d).

A "county juvenile agency" is an agency operated by a county that has assumed financial responsibility for all juveniles under court jurisdiction in the county. MCL 45.623. A "county juvenile agency" must be created pursuant to the "County Juvenile Agency Act," MCL 45.621 et seq. The act and related amendments to other statutes allow a "county juvenile agency" to provide services to juveniles "within or likely to come within" the Family Division's jurisdiction of criminal offenses by juveniles and the Criminal Division's jurisdiction over "automatically waived" juveniles. Because the act applies only to a county that is eligible for transfer of federal "Title IV-E funds"* under a 1997 waiver, the act apparently only applies to Wayne County. MCL 45.626. The Youth Rehabilitation Services Act, MCL 803.302 et seq., was amended to provide that "Act 150" wards are "public wards" rather than "state wards," because juveniles may be committed to a "county juvenile agency" if one has been created within the county.

*"Title IV-E funds" are federal funds used to partially reimburse states for costs associated with delinquent and dependent children in foster care. See Section 11.1 for further discussion.

If the court retains jurisdiction over the juvenile, places the juvenile on juvenile probation, and commits the juvenile to public wardship, the court must comply with Subrules (1) through (11) of MCR 6.931(F).

Reimbursement for cost of care and services. The judgment entered by the court must contain a provision for reimbursement by the juvenile or those responsible for the juvenile's support, or both, for the cost of care and services pursuant to MCL 769.1(7).* MCR 6.931(F)(1).

*See Sections 11.2–11.3.

Advice concerning probation revocation. The court must advise the juvenile at sentencing that if the juvenile, while on probation, is convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke juvenile probation and sentence the juvenile to a term of years in prison not to exceed the penalty that might have been imposed for the offense for which the juvenile was originally convicted. MCR 6.931(F)(2).

A defendant who is not advised of the ramifications of a subsequent conviction is not afforded due process and cannot thereafter have his juvenile probation revoked for failure to comply with the condition of probation requiring mandatory revocation and resentencing upon conviction of a felony or misdemeanor punishable by more than one year in prison. *People v Stanley,* 207 Mich App 300, 307 (1994), and *People v Valentin,* 220 Mich App 401, 405–06 (1996).

Records and reports that must be sent to juvenile and Family Independence Agency. The court must assure that the juvenile receives a copy of the social report and must send a copy of the order and the written opinion or transcript of the findings and conclusions of law to the Family Independence Agency or a county juvenile agency. MCL 769.1(9) and MCR 6.931(F)(3)–(4).

Limitations on juvenile probation. The court shall not do any of the following:

- place the juvenile on deferred sentencing as provided in MCL 771.1(2). MCR 6.931(F)(5) and MCL 771.1(5);
- place the juvenile on lifetime probation for a conviction of a controlled substance violation as provided in MCL 771.1(4). MCR 6.931(F)(6) and MCL 771.1(5);
- require as a condition of juvenile probation that the juvenile report to a Department of Corrections probation officer. MCR 6.931(F)(8);
- as a condition of juvenile probation, impose jail time against the juvenile except as provided in MCR 6.933(B)(2)(g). MCR 6.931(F)(9);*
- commit the juvenile to the Department of Corrections for failing to comply with a restitution order. MCR 6.931(F)(10); or
- place the juvenile in a Department of Corrections probation camp for one year as provided in MCL 771.3a(1). MCR 6.931(F)(11) and MCL 771.3a(2).

*See Section 22.7.

In addition, the five-year limit on the term of probation for an adult offender does not apply. MCR 6.931(F)(7).

21.7 Required Findings of Court at Juvenile Sentencing Hearings

MCL 769.1(6) and MCR 6.931(E)(5) require the court to state on the record its findings of fact and conclusions of law forming the basis for its decision under MCL 769.1(3) to place the juvenile on juvenile probation and commit the juvenile to a state agency, or to sentence the juvenile as an adult. MCR 6.931(E)(5) states:

> "**Findings.** The court must make findings of fact and conclusions of law forming the basis for the juvenile probation and commitment decision or the decision to sentence the juvenile as though an adult offender. The findings and conclusions may be incorporated in a written opinion or stated on the record."

Although MCL 769.1(6) and MCR 6.931(E)(5) do not require factual findings on each criterion the court must consider, the Court of Appeals has made such factual findings a requirement of meaningful review. See *People v Passeno,* 195 Mich App 91, 103 (1992), overruled on other grounds 229 Mich App 218 (1998), *People v Miller,* 199 Mich App 609, 612 (1993), and *People v Hazzard,* 206 Mich App 658, 660–61 (1994). The court must "sort the logical, reasonable, and believable evidence on the record from the incredible or irrelevant," and based on these findings, "consider and balance

all the [statutory] factors to decide whether to sentence a defendant as a juvenile or adult." *People v Thenghkam,* 240 Mich App 29, 67 (2000), citing *People v Cheeks,* 216 Mich App 470, 478–79 (1996).

In *Thenghkam, supra* at 69–71, the Court of Appeals held that a sentencing court's failure to make findings of fact and to exercise its discretion when deciding whether to sentence a juvenile as an adult invalidated the court's sentence placing the juvenile on probation and committing him to state wardship. The Court in *Thenghkam* relied on *People v Wybrecht,* 222 Mich App 160, 167 (1997), and *People v Miles,* 454 Mich 90, 96 (1997), which held that a sentencing court has authority to correct only an invalid sentence. A sentence may be invalid if the court fails to exercise its discretion because it is acting under a misconception of the law. The Court of Appeals concluded that the juvenile's commitment as a state ward could be traced solely to the sentencing court's errors. Thus, resentencing the juvenile after he had completed probation did not violate the prohibition against double jeopardy. *Thenghkam, supra* at 71.

In *Thenghkam, supra* at 71–73, the Court also concluded that resentencing the juvenile after he had completed probation and been discharged from state wardship would not violate due process. The juvenile defendant relied on *People v Gregorczyk,* 178 Mich App 1 (1989), in which the defendant was resentenced after the Parole Board had discharged him. The Court distinguished the discharge in *Gregorczyk* from a discharge from state wardship "set in motion by the trial court's erroneous decision to sentence him as a juvenile, not by the intervention of an executive authority." *Thenghkam, supra* at 73. Moreover, the sentencing court "perpetuated its own error" in its original sentencing decision by again failing to make proper findings and conclusions following an earlier remand from the Court of Appeals. *Id.* The Court of Appeals remanded the case again for proper findings and conclusions by another judge, instructing the court to impose an adult sentence or dismiss the case if it again found commitment as a state ward appropriate. *Id.* at 74–75.

21.8 Withdrawal of Pleas

In *People v Haynes (After Remand),* 221 Mich App 551, 557–63, 565–68, 571–75 (1997), three juveniles were charged with first-degree murder and other offenses in "automatic waiver" proceedings. All three juveniles pled guilty of first-degree murder, and the court placed them on probation and committed them to state wardship following juvenile sentencing hearings. On first appeal, the Court of Appeals reversed the commitment orders and ordered the juveniles to be sentenced as adults. The juveniles then moved to withdraw their pleas. The sentencing court applied MCR 6.310(B), which governs withdrawal of pleas before sentencing, and granted the juveniles' motions. On appeal after remand, the Court of Appeals held that the sentencing court should have applied MCR 6.311, which governs challenges to pleas after sentencing, and that there were no grounds to

justify setting aside the pleas under MCR 6.311. The decision to grant a motion to set aside a plea after sentencing rests within the sentencing court's discretion. *Haynes, supra,* at 558, citing *People v Eloby (After Remand),* 215 Mich App 472, 475 (1996). The juveniles' pleas were knowing, intelligent, and voluntary. They were informed before tendering their guilty pleas to first-degree murder that they could be sentenced to mandatory life imprisonment if the court chose to sentence them as adults. Furthermore, the juveniles were not denied the effective assistance of counsel due to defense counsels' failure to advise the juveniles that the prosecuting attorney had the right to appeal the court's decision to commit them to state wardship. After noting that the Court of Appeals had held in *People v Effinger,* 212 Mich App 67, 71 (1995), that a guilty plea to first-degree murder was not per se proof that a defendant received ineffective assistance of counsel, the Court in *Haynes* concluded that the juveniles were aware before pleading guilty that they could be sentenced as adults to life imprisonment without parole, that the sentencing court did commit the juveniles to state wardship instead of imposing an adult sentence, and that there was no evidence of promises of leniency.

The United States Court of Appeals for the Sixth Circuit subsequently affirmed the federal district court's grants of writs of habeas corpus to the three juvenile defendants in the *Haynes* case. *Lyons v Jackson,* ___ F3d ___ (CA 6, 2002) and *Miller v Straub,* ___ F3d ___ (2002). The federal courts held that defense counsels' failure to advise their clients of the prosecutors' right to appeal a commitment order, particularly in light of the juveniles' youth, constituted ineffective assistance of counsel, and that the contrary determination by the Michigan Court of Appeals constituted an unreasonable application of clearly established federal law. *Lyons, supra* at __, and *Miller, supra* at ___, citing *Hill v Lockhart,* 474 US 52 (1985) and *Strickland v Washington,* 466 US 668 (1984).